

AMENDED IN ASSEMBLY JULY 2, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 367

Introduced by Senator ~~Harman~~ Negrete McLeod
(Principal coauthor: Senator Harman)

February 25, 2009

~~An act to amend Sections 16061, 16061.5, 16061.7, 16061.8, 16061.9, 16064, and 17200 of, and to add Sections 16060.7, 16068 and 16069 to, the Probate Code, relating to trusts. An act to add Section 51.13 to the Civil Code, relating to discrimination.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 367, as amended, ~~Harman~~ Negrete McLeod. ~~Trusts.~~ *Discrimination.*

The Unruh Civil Rights Act provides that all persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This bill would provide that any discount or other benefit offered or conferred on a customer by a business because the customer has suffered the loss or reduction of employment would not be considered an arbitrary discrimination in violation of that act.

~~(1) Existing law permits a person to make a revocable trust and requires a trustee, to provide the beneficiary of the trust, upon reasonable request, with a report relating to administration of the trust relevant to the beneficiary's interest, including the terms of the trust, except as specified.~~

~~This bill would clarify that the trustee, upon reasonable written request, is required to provide the beneficiary with the terms of the trust. The bill would also require the trustee to report to the beneficiary by providing requested information and the records of the trust's administration.~~

~~(2) Existing law requires the trustee to provide a copy of the trust to any trust beneficiary, among others, under certain circumstances, including when a revocable trust or any portion of a revocable trust becomes irrevocable because of the death of one or more of the settlors of the trust. Existing law requires a trustee to serve a notification of trust administration on beneficiaries, heirs, and the Attorney General, if the trust is charitable and subject to supervision by the Attorney General.~~

~~This bill would revise these provisions to clarify to whom and when a trustee must provide a true and complete copy of the trust, including to a trust beneficiary who requests it whenever there is a change of an irrevocable trust and to the Attorney General, as specified. The bill would also require that the notification of trust administration be served when a power of appointment retained by the settlor is effective or lapses, as specified.~~

~~(3) Existing law limits the time period within which an action may be brought to contest a trust to no more than 120 days from the date the notification by the trustee is served upon him or her, or 60 days from the day on which a copy of the terms of the trust is mailed or personally delivered to him or her during that 120-day period, whichever is later.~~

~~This bill would provide that the 120-day statute of limitation runs whether or not the notice is served within or after a specified time.~~

~~(4) Existing law provides that a trustee who fails to serve the notification by trustee, as described above, on a beneficiary is responsible for all damages, attorney's fees, and costs caused by the failure unless the trustee makes a reasonably diligent effort to comply with that section. Existing law provides that a trustee who fails to serve the notification by trustee, as described above, on an heir who is not a beneficiary and whose identity is known to the trustee is responsible for all damages caused to the heir by the failure unless the trustee shows that the trustee made a reasonably diligent effort, as specified.~~

~~This bill would provide that the liability for failure to file the trustee notification is to be established pursuant to the same provisions for both beneficiaries and heirs. The bill would provide that attorney's fees are recoverable only as damages.~~

(5) Existing law provides that a trustee is not required to report information or account to a beneficiary in certain circumstances, including when the trust instrument waives the report or account, except as specified.

The bill would specify that this right of inspection includes the right to make copies at the expense of the beneficiary, and would provide that specified waivers of a trustee's obligation to provide information and records are against public policy and void. The bill would permit a court, regardless of a waiver of accounting of a beneficiary, to compel the trustee to account upon a showing that it is reasonably likely that material breach of the trust has occurred. The bill would make conforming changes with regard to the authority of a beneficiary to petition the court concerning the internal affairs of the trust.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 51.13 is added to the Civil Code, to read:
- 2 51.13. Any discount or other benefit offered or conferred on a
- 3 customer by a business because the customer has suffered the loss
- 4 or reduction of employment shall not be considered an arbitrary
- 5 discrimination in violation of Section 51.
- 6 SECTION 1. Section 16060.7 is added to the Probate Code,
- 7 to read:
- 8 16060.7. On written request by a beneficiary, the trustee shall
- 9 provide the terms of the trust to the beneficiary, provided that the
- 10 trustee is not required to provide the terms of the trust to the
- 11 beneficiary in any of the circumstances described in Section 16069.
- 12 SEC. 2. Section 16061 of the Probate Code is amended to read:
- 13 16061. Except as provided in Section 16069, on reasonable
- 14 written request by a beneficiary, the trustee shall report to the
- 15 beneficiary by providing requested information and records to the
- 16 beneficiary relating to the administration of the trust relevant to
- 17 the beneficiary's interest.
- 18 SEC. 3. Section 16061.5 of the Probate Code is amended to
- 19 read:
- 20 16061.5. (a) A trustee shall provide a true and complete copy
- 21 of the terms of the irrevocable trust, or irrevocable portion of the
- 22 trust, to each of the following:

~~(1) Any beneficiary of the trust who requests it, and to any heir of a deceased settlor who requests it, when a revocable trust or any portion of a revocable trust becomes irrevocable because of the death of one or more of the settlors of the trust, when a power of appointment is effective or lapses upon the death of a settlor under the circumstances described in paragraph (3) of subdivision (a) of Section 16061.7, or because, by the express terms of the trust, the trust becomes irrevocable within one year of the death of a settlor because of a contingency related to the death of one or more of the settlors of the trust.~~

~~(2) Any beneficiary of the trust who requests it, whenever there is a change of trustee of an irrevocable trust.~~

~~(3) If the trust is a charitable trust subject to the supervision of the Attorney General, to the Attorney General, if requested, when a revocable trust or any portion of a revocable trust becomes irrevocable because of the death of one or more of the settlors of the trust, when a power of appointment is effective or lapses upon the death of a settlor under the circumstances described in paragraph (3) of subdivision (a) of Section 16061.7, or because, by the express terms of the trust, the trust becomes irrevocable within one year of the death of a settlor because of a contingency related to the death of one or more of the settlors of the trust, and whenever there is a change of trustee of an irrevocable trust.~~

~~(b) The trustee shall, for purposes of this section, rely upon any final judicial determination of heirship. However, the trustee shall have discretion to make a good faith determination by any reasonable means of the heirs of a deceased settlor in the absence of a final judicial determination of heirship known to the trustee.~~

~~SEC. 4. Section 16061.7 of the Probate Code is amended to read:~~

~~16061.7. (a) A trustee shall serve a notification by the trustee as described in this section in the following events:~~

~~(1) When a revocable trust or any portion thereof becomes irrevocable because of the death of one or more of the settlors of the trust, or because, by the express terms of the trust, the trust becomes irrevocable within one year of the death of a settlor because of a contingency related to the death of one or more of the settlors of the trust.~~

~~(2) Whenever there is a change of trustee of an irrevocable trust. The duty to serve the notification by the trustee is the duty of the~~

1 continuing or successor trustee, and any one cotrustee may serve
2 the notification.

3 ~~(3) Whenever a power of appointment retained by a settlor is~~
4 ~~effective or lapses upon the death of the settlor with respect to an~~
5 ~~inter vivos trust which was, or was purported to be, irrevocable~~
6 ~~upon its creation. The duty to serve the notification by the trustee~~
7 ~~is the duty of the continuing or successor trustee, and any one~~
8 ~~cotrustee may serve the notification.~~

9 ~~(b) The notification by the trustee required by subdivision (a)~~
10 ~~shall be served on each of the following:~~

11 ~~(1) Each beneficiary of the irrevocable trust or irrevocable~~
12 ~~portion of the trust, subject to the limitations of Section 15804.~~

13 ~~(2) Each heir of the deceased settlor, if the event that requires~~
14 ~~notification is the death of a settlor or irrevocability within one~~
15 ~~year of the death of the settlor of the trust by the express terms of~~
16 ~~the trust because of a contingency related to the death of a settlor.~~

17 ~~(3) If the trust is a charitable trust subject to the supervision of~~
18 ~~the Attorney General, to the Attorney General.~~

19 ~~(c) A trustee shall, for purposes of this section, rely upon any~~
20 ~~final judicial determination of heirship, known to the trustee, but~~
21 ~~the trustee shall have discretion to make a good faith determination~~
22 ~~by any reasonable means of the heirs of a deceased settlor in the~~
23 ~~absence of a final judicial determination of heirship known to the~~
24 ~~trustee.~~

25 ~~(d) The trustee need not provide a copy of the notification by~~
26 ~~trustee to any beneficiary or heir (1) known to the trustee but who~~
27 ~~cannot be located by the trustee after reasonable diligence or (2)~~
28 ~~unknown to the trustee.~~

29 ~~(e) The notification by trustee shall be served by mail to the last~~
30 ~~known address, pursuant to Section 1215, or by personal delivery.~~

31 ~~(f) The notification by trustee shall be served not later than 60~~
32 ~~days following the occurrence of the event requiring service of the~~
33 ~~notification by trustee, or 60 days after the trustee became aware~~
34 ~~of the existence of a person entitled to receive notification by~~
35 ~~trustee, if that person was not known to the trustee on the~~
36 ~~occurrence of the event requiring service of the notification. If~~
37 ~~there is a vacancy in the office of the trustee on the date of the~~
38 ~~occurrence of the event requiring service of the notification by~~
39 ~~trustee, or if that event causes a vacancy, then the 60-day period~~

1 for service of the notification by trustee commences on the date
2 the new trustee commences to serve as trustee.

3 (g) ~~The notification by trustee shall contain the following~~
4 ~~information:~~

5 (1) ~~The identity of the settlor or settlors of the trust and the date~~
6 ~~of execution of the trust instrument.~~

7 (2) ~~The name, mailing address and telephone number of each~~
8 ~~trustee of the trust.~~

9 (3) ~~The address of the physical location where the principal~~
10 ~~place of administration of the trust is located, pursuant to Section~~
11 ~~17002.~~

12 (4) ~~Any additional information that may be expressly required~~
13 ~~by the terms of the trust instrument.~~

14 (5) ~~A notification that the recipient is entitled, upon reasonable~~
15 ~~request to the trustee, to receive from the trustee a true and~~
16 ~~complete copy of the terms of the trust.~~

17 (h) ~~If the notification by the trustee is served because a revocable~~
18 ~~trust or any portion of it has become irrevocable because of the~~
19 ~~death of one or more settlors of the trust, or because, by the express~~
20 ~~terms of the trust, the trust becomes irrevocable within one year~~
21 ~~of the death of a settlor because of a contingency related to the~~
22 ~~death of one or more of the settlors of the trust, the notification by~~
23 ~~the trustee shall also include a warning, set out in a separate~~
24 ~~paragraph in not less than 10-point boldface type, or a reasonable~~
25 ~~equivalent thereof, that states as follows:~~

26 ~~“You may not bring an action to contest the trust more than 120~~
27 ~~days from the date this notification by the trustee is served upon~~
28 ~~you or 60 days from the date on which a copy of the terms of the~~
29 ~~trust is mailed or personally delivered to you during that 120-day~~
30 ~~period, whichever is later.”~~

31 (i) ~~Any waiver by a settlor of the requirement of serving the~~
32 ~~notification by trustee required by this section is against public~~
33 ~~policy and shall be void.~~

34 (j) ~~A trustee may serve a notification by trustee in the form~~
35 ~~required by this section on any person in addition to those on whom~~
36 ~~the notification by trustee is required to be served. A trustee is not~~
37 ~~liable to any person for serving or for not serving the notice on~~
38 ~~any person in addition to those on whom the notice is required to~~
39 ~~be served. A trustee is not required to serve a notification by trustee~~

1 if the event that otherwise requires service of the notification by
2 trustee occurs before January 1, 1998.

3 SEC. 5. ~~Section 16061.8 of the Probate Code is amended to~~
4 ~~read:~~

5 16061.8. ~~Regardless of whether the notice is served within or~~
6 ~~after the time period set forth in subdivision (f) of Section 16061.7,~~
7 ~~no person upon whom the notification by the trustee is served~~
8 ~~pursuant to this chapter may bring an action to contest the trust~~
9 ~~more than 120 days from the date the notification by the trustee is~~
10 ~~served upon him or her, or 60 days from the day on which a copy~~
11 ~~of the terms of the trust is mailed or personally delivered to him~~
12 ~~or her during that 120-day period, whichever is later.~~

13 SEC. 6. ~~Section 16061.9 of the Probate Code is amended to~~
14 ~~read:~~

15 16061.9. (a) ~~Except as provided in subdivision (b), a trustee~~
16 ~~who fails to comply with Section 16061.7 shall be responsible for~~
17 ~~all damages caused by the failure including, but not limited to,~~
18 ~~reasonable attorney's fees and costs incurred by or on behalf of~~
19 ~~the beneficiary or heir.~~

20 (b) (1) ~~The trustee's exercise of reasonable diligence in~~
21 ~~ascertaining the identity and mailing address of the beneficiary or~~
22 ~~heir and otherwise complying with Section 16061.7 shall constitute~~
23 ~~a complete defense to any action based on the beneficiary's or~~
24 ~~heir's failure to receive the notification as required by Section~~
25 ~~16061.7.~~

26 (2) ~~For purposes of this subdivision, "reasonable diligence"~~
27 ~~includes either of the following:~~

28 (A) ~~Notice by first class mail to the beneficiary or heir at the~~
29 ~~beneficiary's or heir's last mailing address actually known to the~~
30 ~~trustee if the notice has not been returned to the trustee as~~
31 ~~undelivered mail within 30 business days of mailing.~~

32 (B) ~~If the notice is returned as undelivered mail within 30~~
33 ~~business days of mailing or if the trustee does not have a last~~
34 ~~mailing address for the beneficiary or heir, retention by the trustee~~
35 ~~of an investigative service at the expense of the trust.~~

36 (c) ~~A trustee, in exercising discretion with respect to the timing~~
37 ~~and nature of distributions of trust assets, may consider the fact~~
38 ~~that the period in which a beneficiary or heir could bring an action~~
39 ~~to contest the trust has not expired.~~

40 SEC. 7. ~~Section 16064 of the Probate Code is amended to read:~~

1 ~~16064. The trustee is not required to account to a beneficiary;~~
2 ~~as described in subdivision (a) of Section 16062, in any of the~~
3 ~~following circumstances:~~

4 ~~(a) To the extent the trust instrument waives the account, except~~
5 ~~that no waiver described in subdivision (e) of Section 16062 shall~~
6 ~~be valid or enforceable. Regardless of a waiver of accounting in~~
7 ~~the trust instrument, upon a showing that it is reasonably likely~~
8 ~~that a material breach of the trust has occurred, the court may~~
9 ~~compel the trustee to account.~~

10 ~~(b) As to a beneficiary who has waived in writing the right to~~
11 ~~an account. A waiver of rights under this subdivision may be~~
12 ~~withdrawn in writing at any time as to future accounts. Regardless~~
13 ~~of a waiver of accounting by a beneficiary, upon a showing that~~
14 ~~it is reasonably likely that a material breach of the trust has~~
15 ~~occurred, the court may compel the trustee to account.~~

16 ~~(c) In any of the circumstances set forth in Section 16069.~~

17 ~~SEC. 9. Section 16068 is added to the Probate Code, to read:~~

18 ~~16068. Any waiver by a settlor of the obligation of the trustee~~
19 ~~of either of the following is against public policy and shall be void:~~

20 ~~(a) To provide the terms of the trust to the beneficiary as~~
21 ~~required by Section 16060.7.~~

22 ~~(b) To provide requested information and records to the~~
23 ~~beneficiary as required by Section 16061.~~

24 ~~SEC. 10. Section 16069 is added to the Probate Code, to read:~~

25 ~~16069. The trustee is not required to account to a beneficiary;~~
26 ~~provide the terms of the trust to a beneficiary or to provide~~
27 ~~requested information and records to the beneficiary pursuant to~~
28 ~~Section 16051, in any of the following circumstances:~~

29 ~~(a) In the case of a beneficiary of a revocable trust, as provided~~
30 ~~in Section 15800, for the period when the trust may be revoked.~~

31 ~~(b) If the beneficiary and the trustee are the same person.~~

32 ~~SEC. 11. Section 17200 of the Probate Code is amended to~~
33 ~~read:~~

34 ~~17200. (a) Except as provided in Section 15800, a trustee or~~
35 ~~beneficiary of a trust may petition the court under this chapter~~
36 ~~concerning the internal affairs of the trust or to determine the~~
37 ~~existence of the trust.~~

38 ~~(b) Proceedings concerning the internal affairs of a trust include;~~
39 ~~but are not limited to, proceedings for any of the following~~
40 ~~purposes:~~

- 1 ~~(1) Determining questions of construction of a trust instrument.~~
- 2 ~~(2) Determining the existence or nonexistence of any immunity,~~
- 3 ~~power, privilege, duty, or right.~~
- 4 ~~(3) Determining the validity of a trust provision.~~
- 5 ~~(4) Ascertaining beneficiaries and determining to whom property~~
- 6 ~~shall pass or be delivered upon final or partial termination of the~~
- 7 ~~trust, to the extent the determination is not made by the trust~~
- 8 ~~instrument.~~
- 9 ~~(5) Settling the accounts and passing upon the acts of the trustee,~~
- 10 ~~including the exercise of discretionary powers.~~
- 11 ~~(6) Instructing the trustee.~~
- 12 ~~(7) Compelling the trustee to do any of the following:~~
- 13 ~~(A) Provide a copy of the terms of the trust.~~
- 14 ~~(B) Provide information and records about the trust under~~
- 15 ~~Section 16061 if the trustee has failed to provide the requested~~
- 16 ~~information and records within 60 days after the beneficiary's~~
- 17 ~~reasonable written request, and the beneficiary has not received~~
- 18 ~~the requested information and records from the trustee within the~~
- 19 ~~six months preceding the request.~~
- 20 ~~(C) Account to the beneficiary, subject to the limitations of~~
- 21 ~~Section 16064 if the trustee has failed to submit a requested account~~
- 22 ~~within 60 days after written request of the beneficiary and no~~
- 23 ~~account has been made within six months preceding the request.~~
- 24 ~~(8) Granting powers to the trustee.~~
- 25 ~~(9) Fixing or allowing payment of the trustee's compensation~~
- 26 ~~or reviewing the reasonableness of the trustee's compensation.~~
- 27 ~~(10) Appointing or removing a trustee.~~
- 28 ~~(11) Accepting the resignation of a trustee.~~
- 29 ~~(12) Compelling redress of a breach of the trust by any available~~
- 30 ~~remedy.~~
- 31 ~~(13) Approving or directing the modification or termination of~~
- 32 ~~the trust.~~
- 33 ~~(14) Approving or directing the combination or division of~~
- 34 ~~trusts.~~
- 35 ~~(15) Amending or conforming the trust instrument in the manner~~
- 36 ~~required to qualify a decedent's estate for the charitable estate tax~~
- 37 ~~deduction under federal law, including the addition of mandatory~~
- 38 ~~governing instrument requirements for a charitable remainder trust~~
- 39 ~~as required by final regulations and rulings of the United States~~
- 40 ~~Internal Revenue Service.~~

1 ~~(16) Authorizing or directing transfer of a trust or trust property~~
2 ~~to or from another jurisdiction.~~

3 ~~(17) Directing transfer of a testamentary trust subject to~~
4 ~~continuing court jurisdiction from one county to another.~~

5 ~~(18) Approving removal of a testamentary trust from continuing~~
6 ~~court jurisdiction.~~

7 ~~(19) Reforming or excusing compliance with the governing~~
8 ~~instrument of an organization pursuant to Section 16105.~~

9 ~~(20) Determining the liability of the trust for any debts of a~~
10 ~~deceased settlor. However, nothing in this paragraph shall provide~~
11 ~~standing to bring an action concerning the internal affairs of the~~
12 ~~trust to a person whose only claim to the assets of the decedent is~~
13 ~~as a creditor.~~

14 ~~(21) Determining petitions filed pursuant to Section 15687 and~~
15 ~~reviewing the reasonableness of compensation for legal services~~
16 ~~authorized under that section. In determining the reasonableness~~
17 ~~of compensation under this paragraph, the court may consider,~~
18 ~~together with all other relevant circumstances, whether prior~~
19 ~~approval was obtained pursuant to Section 15687.~~

20 ~~(22) If a member of the State Bar of California has transferred~~
21 ~~the economic interest of his or her practice to a trustee and if the~~
22 ~~member is a deceased member under Section 9764, a petition may~~
23 ~~be brought to appoint a practice administrator. The procedures,~~
24 ~~including, but not limited to, notice requirements, that apply to the~~
25 ~~appointment of a practice administrator for a deceased member~~
26 ~~shall apply to the petition brought under this section.~~

27 ~~(23) If a member of the State Bar of California has transferred~~
28 ~~the economic interest of his or her practice to a trustee and if the~~
29 ~~member is a disabled member under Section 2468, a petition may~~
30 ~~be brought to appoint a practice administrator. The procedures,~~
31 ~~including, but not limited to, notice requirements, that apply to the~~
32 ~~appointment of a practice administrator for a disabled member~~
33 ~~shall apply to the petition brought under this section.~~

34 ~~(e) The court may, on its own motion, set and give notice of an~~
35 ~~order to show cause why a trustee should not be removed for failing~~
36 ~~to register in the Statewide Registry under Section 2850.~~